

July 14, 2007

EXHIBIT 24

Public Defenders Get Better Marks on Salary

By ADAM LIPTAK

Some poor people accused of federal crimes are represented by full-time federal public defenders who earn salaries, others by court-appointed lawyers who bill by the hour. A new study from an economist at Harvard says there is a surprisingly wide gap in how well the two groups perform.

Both kinds of lawyers are paid by the government, and they were long thought to perform about equally. But the study concludes that lawyers paid by the hour are less qualified and let cases drag on and achieve worse results for their clients, including sentences that average eight months longer.

Appointed lawyers also cost taxpayers \$61 million a year more than salaried public defenders would have cost.

There are many possible reasons for the differences in performance. Salaried public defenders generally handle more cases and have more interactions with prosecutors, so they may have a better sense of what they can negotiate for their clients. Salaried lawyers also tend to have superior credentials and more legal experience, the study found.

The study will add a new layer to the debate over the nation's indigent defense systems. In 1963, the United States Supreme Court ruled in Gideon v. Wainwright that poor people accused of serious crimes were entitled to legal representation paid for by the government.

The federal system handles about 5 percent of all criminal prosecutions and is relatively well financed. The implications of the new study for the states may therefore be limited.

But more than half the states use a combination of public defenders and appointed lawyers, and most indigent defendants are not represented by staff public defenders at the trial level.

In the federal courts, roughly three-quarters of all defendants rely on lawyers paid for by the government, about evenly divided between salaried public defenders and appointed lawyers paid by the hour. Most of the rest hire their own lawyers, with about 2 percent representing themselves.

Before the new study, the debate over how best to provide poor defendants with adequate representation had largely concerned whether lawyers for indigent defendants were paid enough to ensure a fair fight with prosecutors. The debate did not much consider how the lawyers were paid, and whether that made a difference.

The new study looked at federal prosecutions from 1997 to 2001. It was performed by Radha Iyengar, a postdoctoral fellow at the Institute for Quantitative Social Science at Harvard, and presented as a working paper of the National Bureau of Economic Research last month.

Judge Morris B. Hoffman, a Colorado district court judge and a co-author of a 2005 study on the representation of indigent defendants, said the new study's innovation was in its noticing that public defenders and appointed lawyers were assigned randomly in many federal judicial districts.

That meant, Ms. Iyengar wrote, that the two sorts of lawyers had "the same underlying distribution of guilt in the cases they represent and thus are equally likely to lose at trial."

Court-appointed lawyers — known in federal judicial jargon as Criminal Justice Act panel lawyers — are needed when public defenders' offices have conflicts of interest in cases involving multiple defendants. They can also fill in as the volume of prosecutions requires.

The vast majority of federal prosecutions end in plea bargains, and only about 5 percent of them reach trial. Ms. Iyengar found that court-appointed lawyers were slightly more likely to take cases to trial and slightly more likely to lose.

But her most important finding, given all the plea bargains, was that defendants represented by court-appointed lawyers received substantially longer sentences. That suggests that appointed lawyers are less adept at assessing which cases to pursue through trial and at negotiating with prosecutors.

Over all, defendants represented by court-appointed lawyers received sentences averaging about eight months longer. People convicted of violent crimes were given five more months, while those convicted on weapons charges received nearly a year and half more. But those convicted of immigration offenses received sentences that averaged 2.5 months less if represented by appointed lawyers.

Appointed lawyers took longer to resolve cases through plea bargains — 20 days on average, a 10 percent difference.

"These results appear consistent with the hourly wage structure," Ms. Iyengar wrote, as that structure creates incentives for appointed lawyers to take longer to resolve cases.

She concluded that appointed lawyers impose an additional \$5,800 in costs to the system for every case they handle.

Analyzing data from California and Arizona, the study found that appointed lawyers were less experienced and had less impressive credentials.

"The court-appointed lawyers tend to be quite young, tend to be from small practices and also they tend to be from lower-ranked law schools," Ms. Iyengar said in an interview. "They have a smaller client base and

fewer interactions with prosecutors.”

Judge Hoffman said a number of the study’s conclusions were unsurprising given that finding. However they represent their clients, less experienced lawyers tend to do less well in plea negotiations, in deciding which cases to take to trial and in trial outcomes, he said.

Jon M. Sands, the federal public defender in Arizona, said he did not recognize the picture painted in the study. Court-appointed lawyers, Mr. Sands said, “are seasoned and committed, and their sentences on the whole don’t vary that much from those obtained by public defenders.”

David Carroll, the research director for the National Legal Aid and Defender Association, said the study’s most important point was economic. “There is,” Mr. Carroll said, “a cost savings in establishing staff public defender offices.”

Copyright 2007 The New York Times Company

[Privacy Policy](#) | [Search](#) | [Corrections](#) | [RSS](#) | [First Look](#) | [Help](#) | [Contact Us](#) | [Work for Us](#) | [Site Map](#)

An Analysis of the Performance of Federal Indigent Defense Counsel
Radha Iyengar
NBER Working Paper No. 13187
June 2007
JEL No. H4,J3,K4

ABSTRACT

The right to an equal and fair trial regardless of wealth is a hallmark of American jurisprudence. To ensure this right, the government pays attorneys to represent financially needy clients. In the U.S. federal court system, indigent defendants are represented by either public defenders who are salaried employees of the court or private attorneys, known as Criminal Justice Act (CJA) attorneys, who are compensated on an hourly basis. This study measures differences in performance of these types of attorneys and explores some potential causes for these differences. Exploiting the use of random case assignment between the two types of attorneys, an analysis of federal criminal case level data from 1997-2001 from 51 districts indicates that public defenders perform significantly better than CJA panel attorneys in terms of lower conviction rates and sentence lengths. An analysis of data from three districts linking attorney experience, wages, law school quality and average caseload suggests that these variables account for over half of the overall difference in performance. These systematic differences in performance disproportionately affect minority and immigrant communities and as such may constitute a civil rights violation under Title VI of the Civil Rights Act.

Radha Iyengar
Harvard University
Center for Government and International Studies
1730 Cambridge Street, Room 408
Cambridge, MA 02138
and NBER
riyengar@rwj.harvard.edu